

CHAPTER NO. 863

SENATE BILL NO. 2425

By Atchley

Substituted for: House Bill No. 2500

By Rhinehart, Head

AN ACT To amend Tennessee Code Annotated, Title 5, Chapter 1, Part 3; Title 8, Chapter 23; Title 8, Chapter 25; Title 8, Chapter 27; Title 8, Chapters 34 through 37 and Title 8, Chapter 50, relative to compensation and benefits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-25-401, is amended by deleting the same in its entirety.

SECTION 2. Tennessee Code Annotated, Section 8-34-101(19), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

"In-service" means a member who has not retired, has not been refunded and is within one hundred fifty (150) days of such member's last paid day of employment.

SECTION 3. Tennessee Code Annotated, Section 8-36-107(b), is amended by deleting the words and figures "one hundred twenty (120)" and by substituting instead the words and figures "one hundred fifty (150)".

SECTION 4. Tennessee Code Annotated, Section 8-35-111(b)(3), is amended by deleting the first two sentences thereof and by substituting instead the following:

(3) Any tax deferred retirement plan wherein total combined employer contributions to such plans, other than those made pursuant to a salary reduction agreement, do not exceed three percent (3%) of the employee's salary. Notwithstanding any other provision of the law to the contrary, an employer maintaining a tax deferred retirement plan shall not permit contributions to that plan which would exceed the limitations of the Internal Revenue Code, as amended.

SECTION 5. Tennessee Code Annotated, Section 8-35-111(b)(3)(A), is amended by deleting the same in its entirety and by substituting instead the following:

(A) All tax deferred retirement plans established by public employers participating in the state retirement system, wherein employer contributions are made, must be approved by the director of the state retirement system.

SECTION 6. Tennessee Code Annotated, Section 8-35-125, is amended by deleting the same in its entirety and by substituting instead the following:

(a) (1) Any member who is separated from service for reasons other than retirement or death may elect to forfeit all contributory and noncontributory

service established by such member under Chapters 34-37 of this title for the purpose of establishing such service in another state, federal, county or municipal retirement program.

(2) To be effective, the following conditions must be met:

(A) The member must not have received any retirement benefits based upon such service;

(B) The service must be creditable in the other retirement program;

(C) If any of the service is contributory service, the member must have taken a refund of the member's accumulated contributions pursuant to § 8-37-210;

(D) The member must forfeit all service established under Chapters 34-37 of this title; and

(E) The member must sign and file with the retirement division a form whereon the member acknowledges that by forfeiting the service, the member shall not be entitled to reestablish the service in the retirement system so long as the member is entitled to retirement credit for such service in the other retirement program.

(3) A forfeiture of service made pursuant to this subsection shall terminate membership in the retirement system in accordance with the provisions of § 8-35-104 and shall constitute a waiver of all rights in the retirement system on account of the service forfeited.

(b) (1) Any member who has not separated from service may elect to forfeit all service established by such member as a result of employment rendered by the member in a particular employment category provided the forfeiture is for the purpose of establishing such service in another retirement plan operated by:

(A) the federal government;

(B) another state;

(C) a political subdivision of another state; or

(D) a Tennessee county or municipality that is not a participating employer under Chapters 34 – 37 of this title.

For purposes of this subsection, an employment category shall mean employment as a general employee, state police officer, police officer, state judge, county judge, county official or attorney general as such terms are defined in § 8-34-101.

(2) To be effective, the following conditions must be met:

(A) The member must not have received any retirement benefits based upon such service;

(B) The service must be creditable in the other retirement program;

(C) If any of the service is contributory service, the member must take a refund of the member's accumulated contributions attributable to such service pursuant to § 8-37-210;

(D) The member must forfeit all service established by the member as a result of the member's employment in the particular employment category; and

(E) The member must sign and file with the retirement division a form whereon the member acknowledges that by forfeiting the service, the member shall not be entitled to reestablish the service in the retirement system so long as the member is entitled to retirement credit for such service in the other retirement program.

(3) A forfeiture of service made pursuant to this subsection shall constitute a waiver of all rights in the retirement system on account of the service forfeited.

SECTION 7. Tennessee Code Annotated, Section 8-36-108(b), is amended by deleting subdivision (7) thereof in its entirety and by redesignating the existing subdivisions accordingly.

SECTION 8. Tennessee Code Annotated, Title 8, Chapter 36, Part 1, is amended by adding the following as a new appropriately designated section:

8-36-1_. No benefit payable to a minor child under Chapters 34 – 37 of this title shall be made until the guardian of such child has provided the retirement division with documentation establishing such guardianship. In the case of a parent, the documentation may consist of the child's birth certificate or record of adoption, whichever is applicable, and a certified statement from the parent that the parent is the legal guardian of the minor child. The retirement division shall be entitled to rely on such documentation and shall not be liable for damages or other payments by reason of any payment made in reliance thereon. Notwithstanding this section or any other law to the contrary, if the member designated a custodian pursuant to the Tennessee Uniform Transfers to Minors Act to receive benefits payable to a minor child under Chapters 34 – 37 of this title and such designation was made in writing and on file with the retirement division, the benefits payable to such minor shall be made in the name of the minor and paid to the designated custodian pursuant to the Tennessee Uniform Transfers to Minors Act.

SECTION 9. Tennessee Code Annotated, Section 8-36-805(1), is amended by deleting the same in its entirety and by substituting instead the following:

(1) During a twelve-month period, that person does not work more than one hundred (100) days or the equivalent thereof; or if employed as a teacher by an institution of higher learning, twenty-one (21) quarter credit hours or fifteen (15) semester credit hours;

SECTION 10. Tennessee Code Annotated, Section 8-36-805, is amended by adding the following new subdivisions (2) and (3) and by redesignating the existing subdivisions according:

(2) For temporary employment periods commencing on or after July 1, 2002, the entire compensation payable to such retired member for the work shall not exceed an amount equal to the sum of one-half ($\frac{1}{2}$) of the annual full-time salary received by the retired member in the year immediately prior to retirement, adjusted by five percent (5%) for each year since the member's retirement or by such other percentage as may be determined by the Treasurer and the Commissioner of Personnel. In determining such percentage for any given year, the Treasurer and the Commissioner of Personnel may consider any matter which, in their discretion, they deem relevant including, but not limited to, the condition of the labor market and the ability to fill the respective positions;

(3) The retired member may work in addition to the one hundred (100) days prescribed above an additional ninety (90) days during the twelve-month period if employed as a substitute teacher in a public school system; provided, that the superintendent of such school system certifies in writing to the division of retirement that no other qualified personnel are available to substitute teach during such period, and that the compensation payable to the retired member for such work does not exceed the rate of compensation set by the public school system for substitute teachers filling similar vacant positions; and provided further, that the total salary paid to any such retired member for teaching during the twelve-month period shall not exceed the pertinent pro rata share of average salary being paid at the institution in the academic discipline concerned;

SECTION 11. Tennessee Code Annotated, Section 8-36-805, is amended by deleting the current subdivision (3) in its entirety and by substituting instead the following:

(5) The Commissioner of Personnel, the Speaker of the Senate or House of Representatives, the Chief Justice of the Supreme Court, the President of the University of Tennessee, the Chancellor of the State Board of Regents, the Executive Officer or head of any department or agency of the political subdivision, or the superintendent of schools, whichever is applicable:

(A) Shall file a form with the board of trustees setting out the member's name, period to be employed, number of days to be worked, compensation to be paid and anticipated termination date; such form to be filed annually, if applicable, and signed by the member acknowledging the conditions of such return to service;

(B) Shall submit a statement showing working hours and compensation for the retiree when requested; and

(C) Shall be subject to audit to verify working hours and the compensation being paid;

SECTION 12. Tennessee Code Annotated, Section 8-36-805, is amended by deleting the current subdivision (4) in its entirety and by substituting instead the following:

(6) Should the period of return to service or the compensation therefor exceed that specified in this section, the person's monthly retirement allowance shall be reduced by the greater of the following:

(A) Each day worked in excess of the limitation shall result in the loss of one-twentieth ($1/20^{\text{th}}$) of the monthly retirement allowance; or

(B) Any compensation received in excess of the limitation shall reduce the retirement allowance payable by the ratio such compensation exceeds the limitation;

SECTION 13. Tennessee Code Annotated, Section 8-37-104(a)(3), is amended by deleting the semicolon “;” at the end thereof and by substituting instead the following punctuation and words “. Provided, however, such percentage may be increased by the board with the subsequent approval of the council on pensions and insurance;”.

SECTION 14. Tennessee Code Annotated, Section 8-37-108, is amended by adding the following new subsection (c) and by redesignating the current subsections accordingly:

(c) In addition to the members nominated pursuant to subsection (a) above, the treasurer may, at the treasurer's discretion, nominate two (2) additional members to the investment advisory council. One of the additional members shall be of a racial minority and the other shall be female. Both members shall have at least five (5) years' professional experience as a portfolio manager, economist or investment manager in any field for which investments of Tennessee Consolidated Retirement System funds are authorized or as a university professor in the school of business, finance, investments or economics. Any such nomination shall be with the advice and consent of the board of trustees. The terms of office of the additional members shall be for three (3) years with the terms beginning on July 1 and ending on June 30 of the appropriate years.

SECTION 15. Tennessee Code Annotated, Section 8-37-214(g), is amended by deleting the same in its entirety and by substituting instead the following:

(g)(1) Lump sum payments to establish service credit in the Tennessee Consolidated Retirement System in accordance with this section and Chapter 34, Part 6 of this title may be funded in whole or in part through amounts transferred from a tax deferred retirement account to the Tennessee Consolidated Retirement System. For the purposes of this subsection, amounts transferred from a tax deferred retirement account means:

(A) Amounts transferred to the Tennessee Consolidated Retirement System directly from a tax deferred retirement account that are eligible for tax free rollover treatment under the Internal Revenue Code; or

(B) Lump sum distributions received by a member from a tax deferred retirement account that are eligible for tax free rollover treatment

and which are transferred by the member to the Tennessee Consolidated Retirement System within sixty (60) days following the member's receipt of such lump sum distribution.

(2) Prior to accepting any such transfers, the consolidated retirement system may require the member to establish that the amounts to be transferred meet the requirements of this subsection and the Internal Revenue Code. Amounts transferred shall not be forfeitable for any reason and may not be distributed to the member except as otherwise provided in this chapter and Chapters 34-36 of this title.

(3) This subsection will be administered in accordance with the rollover provisions of the Internal Revenue Code.

SECTION 16. Tennessee Code Annotated, Title 8, Chapter 23, Part 2, is amended by adding the following new section:

8-23-2_. Effective July 1, 2002, any self-sustaining board, commission or agency created by the Supreme Court of Tennessee shall be deemed a state agency and all employees of such boards, commissions or agencies shall be deemed state employees and shall be entitled to the same rights and benefits enjoyed by other state employees. Except as otherwise provided in this act, any payments or benefit accruals that would have been payable to or accrued by such employees had they been deemed state employees prior to July 1, 2002 shall not apply retroactively but shall apply for periods commencing after June 30, 2002.

SECTION 17. Tennessee Code Annotated, Section 8-23-206, is amended by adding the following as a new subsection (e) and by redesignating the existing subsection (e) accordingly:

(e) Effective July 1, 2002, an employee of any board, commission or agency created by the Supreme Court of Tennessee shall be eligible for longevity pay under the same terms and conditions that apply to state employees. Eligible employees who have prior service with any such board, commission or agency shall receive longevity credit for each year of such service provided such service would otherwise be creditable for longevity purposes. Longevity benefits provided by this subsection shall not be paid retroactive. The benefits shall be payable only for periods commencing after June 30, 2002 and shall be paid at the end of the month following the month in which the employee's service anniversary date falls.

SECTION 18. Tennessee Code Annotated, Title 8, Chapter 50, Part 8, is amended by adding the following as a new appropriately designated section:

8-50-8_. (a) An employee of any board, commission or agency created by the Supreme Court of Tennessee shall be eligible to accrue leave commencing July 1, 2002 pursuant to the provisions of this part that apply to state employees. Any years of service rendered by the employee to any such board, commission or agency prior to July 1, 2002 shall be used in determining accrual rates and maximum accrual limits.

(b) Any unused leave accrued prior to July 1, 2002 while employed by any board, commission or agency described in subsection (a) shall be considered accumulated leave for purposes of this part provided that:

(1) the administrative office of the courts certifies that the leave for which credit is being sought actually is accrued and due and is substantiated by records of the applicable board, commission or agency compiled during the course of employment for which the leave was earned and not from records compiled solely for purposes of establishing leave credit; and

(2) the amount of accrued leave shall not exceed the amount that would have been accumulated under this part had the employees been deemed state employees prior to July 1, 2002.

SECTION 19. Tennessee Code Annotated, Section 8-27-205(b)(2), is amended by adding the following new sentence at the end thereof:

“Years of service”, as used in this subsection, shall also mean those years of service rendered by a retiree prior to July 1, 2002 as an employee of any board, commission or agency created by the Supreme Court of Tennessee, regardless of whether the retiree established such service in the consolidated retirement system pursuant to Section 20 of this act.

SECTION 20. Tennessee Code Annotated, Title 8, Chapter 35, Part 1, is amended by adding the following as a new appropriately designated section:

8-35-1____. (a) Effective July 1, 2002, all present and future employees of any self-sustaining board, commission or agency created by the Supreme Court of Tennessee shall participate in the Tennessee Consolidated Retirement System as a condition of employment and any pre-existing employee pension or retirement program maintained by any such board, commission or agency shall be closed. Except as otherwise provided in this section, the membership of such employees in the retirement system shall be governed by the same terms and conditions applicable to state general employees as such term is defined in § 8-34-101(18).

(b) Notwithstanding any other law to the contrary, all years of service rendered by a member prior to July 1, 2002 as an employee of any board, commission or agency described in subsection (a) above shall be used in determining eligibility for a service retirement allowance pursuant to § 8-36-201, an early service retirement allowance pursuant to § 8-36-301 and for calculating the years of creditable service projection under § 8-36-501(c)(2) and (c)(3), regardless of whether the member established such service in retirement system pursuant to subsection (c) below. Unless established pursuant to subsection (c) below, the service shall only be credited for the purpose of establishing eligibility for a service or early service retirement allowance or for calculating the years of creditable service projection under § 8-36-501(c)(2) and (c)(3), and shall not be used for any other purpose including, but not limited to, § 8-34-605. No benefit shall be paid on such service unless established pursuant to subsection (c) below.

(c) Any member or retired member of the retirement system shall be entitled to establish retirement credit for previous service rendered to any board, commission or agency described in subsection (a) above. Notwithstanding any other law to the

contrary, the establishment of such prior service shall be subject to following terms and conditions:

(1) For service rendered prior to the effective date of the member's participation in any pre-existing employee pension or retirement program maintained by any such board, commission or agency, the member or retired member must make a back payment to the retirement system equal to:

(A) the amount of employee contributions such member would have made had the member been a member of the retirement system during that time, plus

(B) interest on said amount at the rate provided in § 8-37-214.

(2) For service rendered on or after the effective date of the member's participation in any pre-existing employee pension or retirement program maintained by any such board, commission or agency, the member or retired member must make a back payment to the retirement system equal to:

(A) the amount of employer contributions which would have been made had the member been a member of the retirement system during that time, plus

(B) interest on said amount at the rate provided in § 8-37-214.

(3) A member or retired member applying for prior service credit under this subsection for service rendered during any period from July 1, 1981 through the effective date of the member's participation in any pre-existing employee pension or retirement program maintained by any board, commission or agency described in subsection (a) must establish all prior service creditable under this section before being eligible to establish such service. Until all such service is established, no prior service credit purchased under this section shall be used in determining any rights or benefits under the retirement system until all service creditable under this subsection has been established.

(4) For service rendered prior July 1, 1981 and for service rendered on or after the effective date of the member's participation in any pre-existing employee pension or retirement program maintained by any such board, commission or agency described in subsection (a), the member may establish all or a portion of such service provided that the service being established must be for service rendered most recent in time.

(5) The one (1) year membership service requirement of § 8-37-214 shall not apply to service established under this subsection.

(6) The payment required to establish the prior service credit may be made in a lump sum or through monthly installments pursuant to § 8-37-220. Any lump sum payment to establish the service may be made through amounts transferred from any pension plan maintained on behalf of the member by any such board, commission or agency. If the member elects to establish the credit through monthly installments, no amount may be transferred from such other

pension plan unless the transfer is being made to pay-off the remaining balance owed under the installment arrangement. Notwithstanding § 8-35-111 or any other law to the contrary, if the cost to establish the credit is not funded in whole or in part from amounts transferred by the member from such other pension plan, the member shall be permitted to retain ownership of such amounts without violating § 8-35-111.

(7) Retirement credit being established through monthly installments cannot be used in determining any rights or benefits under the retirement system until all payments for the same have been received by the retirement system.

(c) Service established in accordance with the section shall be credited in Group 1 only.

SECTION 21. Tennessee Code Annotated, Section 8-34-101(14)(B), is amended by deleting the semicolon “;” at the end thereof and by substituting instead the following punctuation and words:

“Earnable compensation” shall also include for any general employee in the executive, legislative, or judicial branch of government any compensation paid under § 3-1-106(f) and any non-cash compensation falling under Internal Revenue Service Regulation Section 1.61-2T(d) as such section exists on the effective date of this act, if such compensation was includable in gross income for federal income tax purposes and was subject to contributions under the provisions of the Federal Insurance Contributions Act;

SECTION 22. Tennessee Code Annotated, Section 8-36-107(c), is amended by deleting the same in its entirety and by substituting instead the following:

(c) Notwithstanding any provision of this section to the contrary, if a member described in subsection (a) dies while on an approved medical leave of absence, an additional amount equal to such member's accumulated contributions shall be paid in accordance with subsection (a); provided, that:

(1) The member maintained health insurance coverage through the member's employer;

(2) The member dies within one (1) year upon being approved for the leave of absence; and

(3) No benefit is payable under §§ 8-36-108, 8-36-109 or Part 6 of this chapter.

(d) Any person who is entitled to receive a retirement allowance under §§ 8-36-108, 8-36-109 or Part 6 of this chapter on account of the death of a member prior to retirement may elect to receive the benefits provided in subsection (a) or (b) of this section in lieu of the benefits to which such person would otherwise be entitled.

SECTION 23. Tennessee Code Annotated, Title 8, Chapter 35, Part 2, is amended by adding the following as a new appropriately designated section:

8-35-2_. (a) Workforce Solutions, which is the entity engaged in the administration of the programs authorized under the Workforce Investment Act of 1998 (29 U.S.C. § 2801 et seq.) on behalf of Local Workforce Investment Area 6, shall be eligible to be a participating employer in the Tennessee Consolidated Retirement System upon satisfying the following conditions:

(1) The county executives of the counties that comprise Local Workforce Investment Area 6 pass a resolution authorizing an actuarial study to determine the liability associated with such participation, and accepting responsibility for the costs of such study; and

(2) Following receipt of the actuarial study, such county executives pass a resolution authorizing such participation and agreeing that the liability therefor shall be paid from funds allocated to the Local Workforce Investment Area 6 by grant, contract or otherwise from state, local or federal sources.

(b) The employees of Workforce Solutions shall make the same contributions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system under this part.

(c) Such employees shall be entitled to credit for such prior service as approved by the county executives described in subsection (a) above under the same provisions which apply to employees of local governments.

(d) In case of the withdrawal of Workforce Solutions as a participating employer, the benefits of members and beneficiaries shall be determined in accordance with the provisions of § 8-35-211.

(e) The retirement system shall not be liable for the payment of retirement allowances or other benefits on account of employees of Workforce Solutions or their beneficiaries for which reserves have not been previously created from funds contributed by Workforce Solutions or its employees, or both.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of Workforce Solutions.

SECTION 24. Tennessee Code Annotated, Section 8-36-111, is amended by deleting the same in its entirety and by substituting instead the following:

All retirement allowances and other benefits accrued or accruing to any person under the provisions of Chapters 34-37 of this title, the accumulated contributions of members and the cash and assets in the funds created under Chapters 34-37 of this title shall not be subject to execution, attachment, garnishment, or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

SECTION 25. The provisions of Sections 21 and 22 of this act shall be subject to the funding being provided in the General Appropriations Act.

SECTION 26. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

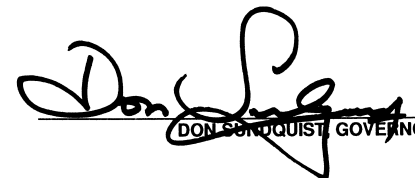
SECTION 27. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: July 4, 2002


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of July 2002


DON SUNDQUIST, GOVERNOR